

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RINESON CURTIS ADAMS,

Plaintiff,

v.

DR. WONG, et al.,

Defendants.

No. 2:21-cv-1921 KJN P

ORDER

Plaintiff is a state prisoner, proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983, and requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis is granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff is obligated to make monthly payments of twenty percent of the preceding month's income credited to plaintiff's trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time the

1 amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C.
2 § 1915(b)(2).

3 The court is required to screen complaints brought by prisoners seeking relief against a
4 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
5 court must dismiss a complaint or portion thereof if the prisoner raised claims that are legally
6 "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek
7 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

8 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
9 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
10 Cir. 1984). The court may, therefore, dismiss a claim as frivolous when it is based on an
11 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
12 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
13 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
14 Cir. 1989), superseded by statute as stated in Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir.
15 2000) ("[A] judge may dismiss [in forma pauperis] claims which are based on indisputably
16 meritless legal theories or whose factual contentions are clearly baseless."); Franklin, 745 F.2d at
17 1227.

18 Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and plain
19 statement of the claim showing that the pleader is entitled to relief,' in order to 'give the
20 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic
21 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).
22 In order to survive dismissal for failure to state a claim, a complaint must contain more than "a
23 formulaic recitation of the elements of a cause of action;" it must contain factual allegations
24 sufficient "to raise a right to relief above the speculative level." Bell Atlantic, 550 U.S. at 555.
25 However, "[s]pecific facts are not necessary; the statement [of facts] need only 'give the
26 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Erickson v.
27 Pardus, 551 U.S. 89, 93 (2007) (quoting Bell Atlantic, 550 U.S. at 555, citations and internal
28 quotations marks omitted). In reviewing a complaint under this standard, the court must accept as

1 true the allegations of the complaint in question, Erickson, 551 U.S. at 93, and construe the
 2 pleading in the light most favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236
 3 (1974), overruled on other grounds, Davis v. Scherer, 468 U.S. 183 (1984).

4 Plaintiff states he is a hermaphrodite who, despite having a penis, now claims to be more
 5 woman than man.¹ Plaintiff alleges that defendants claim plaintiff is mentally ill and is lying to
 6 obtain women's housing; they assigned plaintiff to EOP.² Plaintiff seeks transfer to a women's
 7 facility.

8 “[T]o maintain an Eighth Amendment claim based on prison medical treatment, an inmate
 9 must show ‘deliberate indifference to serious medical needs.’” Jett v. Penner, 439 F.3d 1091,
 10 1096 (9th Cir. 2006) (quoting Estelle v. Gamble, 429 U.S. 97, 104 (1976)). This requires plaintiff
 11 to show (1) “a ‘serious medical need’ by demonstrating that ‘failure to treat a prisoner’s condition
 12 could result in further significant injury or the unnecessary and wanton infliction of pain,’” and
 13 (2) “the defendant’s response to the need was deliberately indifferent.” Jett, 439 F.3d at 1096
 14 (some internal quotation marks omitted) (quoting McGuckin v. Smith, 974 F.2d 1050, 1059-60
 15 (9th Cir. 1992)).

16 Indications that a prisoner has a serious medical need for treatment include the “‘existence
 17 of an injury that a reasonable doctor or patient would find important and worthy of comment or
 18 treatment; the presence of a medical condition that significantly affects an individual's daily
 19 activities; or the existence of chronic and substantial pain.’” Lopez v. Smith, 203 F.3d 1122,
 20 1131 (9th Cir. 2000) (quoting McGuckin, 974 F.2d at 1059-60).

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22 ¹ Plaintiff also claims that he proved he was a hermaphrodite under his old CDCR number, which
 23 he did not provide, and asserts he wants to have all his “plastic surgery done in custody because
 24 [he] already won it.” (ECF No. 1 at 3.) However, plaintiff provided no case name or number to
 support his claim that he “already won it.” (Id.)

25 ² The Mental Health Services Delivery System Program Guide for the California Department of
 26 Corrections and Rehabilitation provides four levels of mental health care services: Correctional
 27 Clinical Case Management System (“CCCMS”); Enhanced Outpatient (“EOP”); Mental Health
 28 Crisis Bed (“MHCB”) and inpatient hospital care. Coleman v. Brown, 2013 WL 6491529, at *1
 (E.D. Cal. Dec. 10, 2013).

Deliberate indifference is established only where the defendant subjectively “knows of and disregards an excessive risk to inmate health and safety.” Toguchi v. Chung, 391 F.3d 1051, 1057 (9th Cir. 2004) (citation and internal quotation marks omitted). Deliberate indifference can be established “by showing (a) a purposeful act or failure to respond to a prisoner’s pain or possible medical need and (b) harm caused by the indifference.” Jett, 439 F.3d at 1096 (citation omitted). Civil recklessness (failure “to act in the face of an unjustifiably high risk of harm that is either known or so obvious that it should be known”) is insufficient to establish an Eighth Amendment violation. Farmer v. Brennan, 511 U.S. 825, 836-37 & n.5 (1994) (citations omitted).

A difference of opinion between an inmate and prison medical personnel -- or between medical professionals -- regarding the appropriate course of treatment does not amount to deliberate indifference to serious medical needs. Toguchi, 391 F.3d at 1058; Sanchez v. Vild, 891 F.2d 240, 242 (9th Cir. 1989). To prevail, a plaintiff “must show that the course of treatment the doctors chose was medically unacceptable under the circumstances . . . and . . . that they chose this course in conscious disregard of an excessive risk to plaintiff’s health.” Jackson v. McIntosh, 90 F.3d 330, 332 (9th Cir. 1996) (internal citations omitted).

The court finds the allegations in plaintiff’s complaint so vague and conclusory that it is unable to determine whether the current action is frivolous or fails to state a claim for relief. Rather, it appears plaintiff has a difference of opinion with his medical providers, and that his doctors are providing mental health treatment. While gender dysphoria can be a serious medical need, most doctors require intense mental health treatment before authorizing gender confirmation surgery. At the time of his commitment offense, plaintiff was living as a man with his girlfriend.³ In his pleading, he alleges that he is only “now” claiming to be more woman than man. As pled, plaintiff fails to allege facts demonstrating a particular defendant is deliberately indifferent to plaintiff’s serious medical needs. Plaintiff must allege with at least some degree of particularity overt acts which defendants engaged in that support plaintiff’s claim. Id.

³ People v. Adams, 2017 WL 3910875, B270285 2017 (Cal. Ct. App. Sep. 7, 2017).

1 Therefore, the complaint must be dismissed. The court, however, grants leave to file an
2 amended complaint.

3 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions
4 about which he complains resulted in a deprivation of plaintiff's constitutional rights. See e.g.,
5 West v. Atkins, 487 U.S. 42, 48 (1988). Also, the complaint must allege in specific terms how
6 each named defendant is involved. Rizzo v. Goode, 423 U.S. 362, 371 (1976). There can be no
7 liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a
8 defendant's actions and the claimed deprivation. Rizzo, 423 U.S. at 371; May v. Enomoto, 633
9 F.2d 164, 167 (9th Cir. 1980). Furthermore, vague and conclusory allegations of official
10 participation in civil rights violations are not sufficient. Ivey v. Bd. of Regents, 673 F.2d 266,
11 268 (9th Cir. 1982).

12 In addition, plaintiff is informed that the court cannot refer to a prior pleading in order to
13 make plaintiff's amended complaint complete. Local Rule 220 requires that an amended
14 complaint be complete in itself without reference to any prior pleading. This requirement exists
15 because, as a general rule, an amended complaint supersedes the original complaint. See Ramirez
16 v. County of San Bernardino, 806 F.3d 1002, 1008 (9th Cir. 2015) ("an 'amended complaint
17 supersedes the original, the latter being treated thereafter as non-existent.'" (internal citation
18 omitted)). Once plaintiff files an amended complaint, the original pleading no longer serves any
19 function in the case. Therefore, in an amended complaint, as in an original complaint, each claim
20 and the involvement of each defendant must be sufficiently alleged.

21 In accordance with the above, IT IS HEREBY ORDERED that:

22 1. Plaintiff's request for leave to proceed in forma pauperis is granted.

23 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff
24 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.
25 § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the
26 Director of the California Department of Corrections and Rehabilitation filed concurrently
27 herewith.

28 3. Plaintiff's complaint is dismissed.

1 4. Within thirty days from the date of this order, plaintiff shall complete the attached
2 Notice of Amendment and submit the following documents to the court:

3 a. The completed Notice of Amendment; and

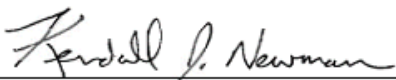
4 b. An original of the Amended Complaint.

5 Plaintiff's amended complaint shall comply with the requirements of the Civil Rights Act, the
6 Federal Rules of Civil Procedure, and the Local Rules of Practice. The amended complaint must
7 also bear the docket number assigned to this case and must be labeled "Amended Complaint."
8 Failure to file an amended complaint in accordance with this order may result in the dismissal of
9 this action.

10 3. The Clerk of the Court is directed to send plaintiff the form for filing a civil rights
11 complaint by a prisoner.

12 Dated: December 1, 2021

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14 /adam1921.14n


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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Defendant.

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NOTICE OF AMENDMENT

Plaintiff hereby submits the following document in compliance with the court's order
filed _____.

DATED: _____ Amended Complaint

Plaintiff